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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,328	03/26/2004	Goran Olofsson	43327-202224	8234

26694 7590 04/13/2006

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EXAMINER
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BERGIN, JAMES S

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/809,328

Applicant(s)

OLOFSSON, GORAN

Examiner

James S. Bergin

Art Unit

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                                |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/25/2004</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Sweden on 03/26/2003. It is noted, however, that applicant has not filed a certified copy of the Swedish 0300834-9 application as required by 35 U.S.C. 119(b).

### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: it incorrectly lists the filing date of the priority application, Sweden application 0300834-9, as 03/26/2004. The correct filing date of this foreign priority application is 03/26/2003.

### ***Election/Restrictions***

3. This application contains claims directed to the following patentably distinct species:

Species 1; the embodiment depicted in Figs. 1 and 2.

Species 2, the embodiment depicted in Fig. 3.

The species are independent or distinct because they define patentably distinct embodiments of the invention, Figs. 1 and 2 depicting a shaped charge device whilst Fig. 3 depicts a high explosive shell at least comprising a different biasing arrangement for the sleeve element.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3 is generic (it is noted that claims 8 and 9 define alternate species for engaging the locking device with the casing).

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

4. During a telephone conversation with Eric Franklin on 3/14/2006 a provisional election was made without traverse to prosecute the invention of Figs. 1 and 2, claims 1-3, and 6-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4 and 5 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

5. The abstract of the disclosure is objected to because it exceeds 150 words. It is important that the abstract not exceed 150 words in length since the space provided for

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the abstract on the computer tape used by the printer is limited. Indefinite language should also be removed. Correction is required. See MPEP § 608.01(b). Line 25, "(Figure 1 is proposed for publication)" should be deleted.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to enable the claim 1, line 3 limitation, "which explosive charge is activated by a sprung device". Page 1, lines 9 and 10 of the specification refer to the explosive charge being activated by the sprung device but the specification then fails to further explain how this happens. It is very well known that explosives can be activated by initiators, detonators etc. but the specification does not enable the activation of an explosive charge by a sprung device.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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9. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention See MPEP § 2173.05(d). Also in claim 1, line 1-2, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable See MPEP § 2173.05(d).

In claim 1 line 3, the meaning of the limitation, "which explosive charge is activated by a sprung device" is unclear. In what sense is the explosive "activated" by a sprung or spring device?

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Cannon (US 6,035,631).

The following rejection is made in as much as claim can be interpreted in the light of the 112 1<sup>st</sup> and 112 2<sup>nd</sup> paragraphs as shown above.

Cannon discloses a rocket or missile 10 (Fig. 1; col. 3, lines 54-56) inherently for carrying munitions in front section 18 (col. 4, lines 10-19). Cannon's missile 10 comprises a casing 14 with an opening at the rear section thereof, the casing 14 containing solid propellant charge 12 that is inherently capable of exploding, the propellant designed to act through the opening at the rear of the missile to propel the missile. Cannon discloses the spring 50 connected to the casing 14 in association with the opening at the rear of the casing 14 via a locking device 20 comprised of the ring segments 32. Cannon discloses that a sleeve 16 is at least partially arranged between the charge 12 and the locking device 20. Upon melting of the pins 40, the springs 50 act by moving the ring segments 32 of the locking device 20 radially inwardly, which fact enables the sleeve 16 to be released from the casing 14 inherently by the action of pressure generated inside the casing 14 by the slow extraneous heating of the charge 12, the locking device 20 also being expelled (col. 4, lines 19-56; col. 5, lines 1-23). The movement of ring segments 32 of the locking device 20 is effected by the action of the springs 50, which action then enables the sleeve 16 to move.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 3 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cannon (US 6,035,631).



Cannon discloses that the springs 50 are resilient biasing means (col. 4, lines 51-55) but fails to further identify the nature of the springs 50. Cannon's disclosure of resiliently biasing springs inherently includes the common types of springs that were used in the art at the time of invention, such inherent disclosure comprising compression springs and wave springs. If the applicant disagrees with the inherency of wave springs to Cannon's disclosure, then the examiner takes official notice that wave springs were a notoriously well known equivalent form of resiliently biasing means used in the art at the time of the applicant's invention. In view of this official notice, to substitute wave springs for Cannon's resiliently biasing springs would have been obvious to one of ordinary skill in the art at the time that the invention was made, because to do so would only involve the use of a notoriously well known equivalent biasing spring means. As an aid to the applicant it is noted that DE 2046372 cited in the applicant's IDS, filed 6/25/2004, and also in the International Search Report, filed 6/25/2004, appears to disclose the wave spring 5 in at least Figs. 1 and 2.

#### ***Allowable Subject Matter***

14. Claims 2 and 6-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1<sup>st</sup> and 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reibel (US 4,365,556; discloses wave springs 28); Ekholm (US

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5,237,929); Lips et al. (US 5,153,373); Hetz (US 5,902,954); Markel et al. (US 6,453,817 B1); McVeagh (US 4,798,145); Strunk et al. (US 3,978,795); Biedermann et al. (EP 1 363 102 A2); Crabtree (US SIR H1504).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Bergin whose telephone number is 571-272-6872. The examiner can normally be reached on Monday - Wednesday and Friday, 8.30 - 5.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. S. Bergin', followed by a horizontal line.

James S. Bergin